IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.08.2009

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THE HONOURABLE MR.JUSTICE T.SUDANTHIRAM

C..A.No.435 of 2006

Gopi ..Appellant

versus

State rep. By Inspector of Police
Ambur Police Station
Ambur, Vellore District. ..Respondent

Criminal Appeal filed against the conviction and sentence made in S.C.No.252 of 2004, on the file of the learned Additional District Sessions Judge-cum-Fast Track Court, Thirupattur, by an order dated 26.05.2005.

For Appellant : Mr.V.R.Velraj

For Respondent : Mr.J.C.Durairaj
Government Advocate (Criminal side)

JUDGMENT
The appellant herein stands convicted by the learned Additional Sessions Judge (FTC), Thirurupattur, in S.C.No.252 of 2004, for an offence under Section 376 IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo six months simple imprisonment. Aggrieved by the said conviction and sentence, the appellant has preferred this appeal.

2. The case of the prosecution is that P.W.8 Nandhini is the daughter of P.W.1 Narayanan and she was aged only seven years at the time of occurrence. On 04.11.2003, she went along with her father-P.W.1 to the field. While she was sitting in the shed, the accused Gopi came there and saying that he would give goa fruit took her to the nearby place and removed her jetty and made her to lie down and then the accused pressed his male organ in her private parts. As she shouted, the accused ran away from the place and on hearing the noise, P.W.1 came there and enquired his daughter and also noticed blood stains in her private parts.

3. P.W.1 went and informed P.W.3 and villagers and then went to the police station and gave a complaint Ex.P.1. P.W.7 Sub-Inspector of Police, Ambur Police Station after receiving the complaint at about 12.00 noon registered the case in Crime No.793 of 2003 under Section 376 IPC. P.W.9 Inspector of Police took up investigation and recovered the clothes of the victim girl P.W.8 and on the same day, he arrested the accused and recorded his confession and also recovered his lungi. Thereafter, P.W.9 went to the scene of occurrence and prepared the observation mahazar and rough sketch and also he took steps to send the property to the Court and for chemical analysis.

4. P.W.2 Doctor examined the victim girl P.W.8 on the same day at about 3.00 p.m., and issued Ex.P.9 accident register. According to the Doctor P.W.2., no injury was seen on the external or internal genitalia. On 06.11.2003, P.W.5, Doctor examined the accused and prepared Ex.P.12 accident register. According to P.W.5, no injury was found over the penis and the person was capable of doing coitus. P.W.9 after completing the investigation, laid the final report on 13.09.2004.

5. To establish the case, the prosecution has examined nine witnesses, marked 16 exhibits and produced 5 material objects. After examination of witnesses, the accused was questioned under Section 313 Cr.P.C., and he denied the complicity. The trial Court after considering the evidence, convicted the accused as stated above.

6. The learned counsel for the appellant submitted that a case was foisted against the accused and the evidence of P.W.8 was not supported by medical evidence. There was a dispute between P.W.1 and the accused regarding the boundary line of the land and therefore P.W.1 has chosen to give false complaint against the accused.

7. The learned Government Advocate submitted that the victim girl P.W.8 shouted at the time of occurrence and therefore, P.W.1 rushed to the scene of occurrence, P.W.8 also narrated the incident to the father P.W.1 and in turn P.W.1 went to the police station and gave the complaint and there is no delay in preferring the complaint. The age of P.W.8 was seven and there is no necessity for P.W.1 to foist the case against the accused.

8. This Court considered the submission made by both parties and perused the records. Though it is contended by the learned counsel for the petitioner that a case has been foisted against the accused, for the reasons that there was a land dispute, the suggestion put forward by defence has been denied by P.W.1. Immediately after the occurrence, P.W.9 had informed about the occurrence to P.W.3, who had corroborated the version of P.W.1. This Court is not prepared to hold that the case has been foisted against the accused and absolutely no occurrence had taken place. At the same time, it is to be seen that what manner occurrence had taken place and to what extent. It is the evidence of P.W.8 victim girl that the accused removed her jatti and pressed his male organ on the female parts. The occurrence had taken place at about 10.00a.m.,. But the Doctor who examined her on the same day did not notice any injury on the private parts of the victim girl. The Doctor also opined that the victim girl was not subjected to rape. Though the evidence of P.W.8 is that blood was oozing out, chemical analysis report does not support, though the clothes of the victim were sent for chemical analysis. In the above said circumstances, it is to be held that the penetration of male organ is not established and even the attempt of rape the victim girl cannot be safely concluded.

9. For the above said reason, the conviction and sentence imposed on the accused under Section 376 IPC is set aside. The accused is found guilty under Section 354 IPC.

10. The learned counsel appearing for the appellant submits that the appellant had already been in jail for 738 days. The appellant/accused is sentenced to undergo to the imprisonment for the period already undergone and he is also directed to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months. If the accused had already paid the fine amount of Rs.1000/-, it may be adjusted.

11. In the result, the appeal is partly allowed.

ksr/tsh